

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

OAK VALLEY INVESTMENTS, L.P., :
: Plaintiff, :
vs. : : **MEMORANDUM DECISION and**
VAL E. SOUTHWICK, VESCOR CAPITAL : **ORDER GRANTING MOTION TO**
CORP., VESCOR DEVELOPMENT, LLC, : **COMPEL DISCOVERY RESPONSES**
SHAWN H. MOORE, VESCOR CAPITAL, : **and INITIAL DISCLOSURES**
LLC, APEX HOLDING 1, LLC, APEX :
HOLDING 2, LLC, APEX HOLDING 3, LLC, : Civil No. 2:06-CV-737 DB
APEX HOLDING 4, LLC, APEX :
HOLDING 5, LLC, APEX HOLDING 6, LLC, : District Judge Dee Benson
and APEX HOLDING 23, LLC, : Magistrate Judge David Nuffer
Defendants and Third-Party :
Plaintiffs, :
vs. :
BRIAN Y. HORNE and DOES 1 through 10, :
Third-Party Defendants. :
:

JONATHAN H. HORNE, M.D., as Trustee for :
Jonathan H. Horne, M.D., P.C. Retirement Plan :
Trust Fund, :
Plaintiff, :
vs. :
VAL E. SOUTHWICK, VESCOR CAPITAL :
CORP., VESCOR DEVELOPMENT, LLC, :
APEX MM, INC., SHAWN MOORE, :
VESCOR CAPITAL, LLC, and VEGAS :
:

VISTA 6, LLC, :
: Defendants and Third-Party :
: Plaintiffs, :
: :
vs. :
: :
BRIAN Y. HORNE and DOES 1 through 10, :
: :
Third-Party Defendants.

Plaintiffs Jonathan Horne, Trustee (Horne) and Oak Valley Investments, L.P. (Oak Valley) filed motions to compel initial disclosures.¹ Additionally, Horne moves to compel discovery responses.²

Initial Disclosures

Defendants concede that formal initial disclosures were not prepared, but claim that former counsel, Mr. Phil Smith, provided the documents comprising defendants' initial disclosures.³ Plaintiffs do not believe that the documents Smith produced can substitute for defendants' initial disclosures. Smith did not file a certificate of service of initial disclosures and did not advise plaintiffs that the documents produced were defendants' initial disclosures.⁴

¹Docket nos. 142 and 144, filed 4/27/07.

²Docket no. 142.

³Defendants' Response to Plaintiff Jonathan H. Horne, Trustee's Motion to Compel Discovery Responses and Initial Disclosures (Response) at 4-5, docket no. 174, filed 6/4/07; *See also* Defendants' Response to Plaintiff Oak Valley's Motion to Compel Initial Disclosures, docket no. 175, filed 6/4/07 (in which defendants incorporate and rely upon their response in docket 174).

⁴Jonathan H. Horne, Trustee's Reply Memorandum in Support of Motion to Compel (Reply) at 5, docket no. 182, filed 6/6/07; *see also* Reply Memorandum in Support of Oak Valley Investments, L.P.'s Motion to Compel Initial Disclosures, docket no. 181, filed 6/6/07.

Initial disclosures are required under Rule 26 of the Federal Rules of Civil Procedure.⁵

Therefore, Defendants shall serve formal initial disclosures to Plaintiffs as requested.

Discovery Responses

Horne seeks responsive answers to the following interrogatories (shown here with the responses already provided by Defendants):

INTERROGATORY NO. 1: Provide a complete accounting of all funds received by you for investment in Vegas Vista, including specifically the funds underlying the Investment.

RESPONSE: Defendants object to this interrogatory because it is vague and ambiguous. Without waiving this objection, defendants will provide plaintiff with a statement of the sources and uses of the funds plaintiffs invested in Vegas Vista VI LLC.

REQUEST NO. 3: From 1994 to the present date, identify all legal actions to which you were a party as a defendant, or counterclaim defendant. With regard to each litigation, identify all parties to the litigation, the case number and court in which the case was filed, describe the dispute, and the resolution of the dispute.

RESPONSE: Defendants object to this interrogatory because it is overly broad and unduly burdensome, and because the information sought is irrelevant to any issue in this case and not reasonably calculated to lead to discovery of admissible evidence.

REQUEST NO. 4: From January 1994 to the present date, if there have been any complaints filed against you with the State of Utah, Securities Division, identify the individuals or entities filing the complaint, summarize the dispute, and the resolution of the dispute, if any, and identify all documents relating to the resolution of the dispute.

RESPONSE: Defendants object to this interrogatory because it is overly broad and unduly burdensome, and because the information

⁵See Fed. R. Civ. P. 26(a)(1) (“a party **must** . . . provide to other parties . . .”) (emphasis added).

sought is irrelevant to any issue in this case and not reasonably calculated to lead to discovery of admissible evidence.⁶

As to Interrogatory 1, defendants argue that the term ““accounting’ is vague and ambiguous and subject to many interpretations.”⁷ They further acknowledge that they agreed to provide a limited response, but were unable to do so because the information was under the control of another company, FTI, a restructuring specialist.⁸ “In addition, defendants intend to produce some 5,000 pages of Vegas Vista records which defendants believe contain the best available information regarding this issue.”⁹

To clarify the “accounting” term, Horne explains that “his request for an accounting is specifically directed to the disposition of his \$600,000 investment. In simple terms, what did defendants do with Horne’s money?”¹⁰ Further, Horne asserts that a 5,000 page “document dump is unacceptable,” and is not the “best information regarding this issue.”¹¹ Horne is entitled to an accounting of his investment funds.

Interrogatories 3 and 4 are both reasonable and relevant. They are narrowly tailored. Defendants shall respond to those interrogatories with any information that is within their

⁶Memorandum of Points and Authorities in Support of Plaintiff Jonathan H. Horne, Trustee’s Motion to Compel Discovery Responses and Initial Disclosures (Memorandum) at 3-4, docket no. 143; *see also* Response at 2-3.

⁷Response at 2.

⁸*Id.*

⁹*Id.*

¹⁰Reply at 3.

¹¹*Id.* at 4.

possession, custody or control. Further, all interrogatory responses shall be signed as required by Rule 33.¹²

ORDER

IT IS HEREBY ORDERED that Plaintiffs' Motions to Compel¹³ are GRANTED.

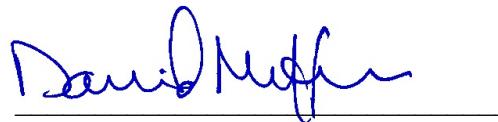
On or before August 1, 2007, defendants shall provide formal initial disclosures to Jonathan H. Horne, Trustee and Oak Valley Investments, L.P.

On or before August 1, 2007, defendants shall provide complete and verified responses to Interrogatories numbered 1, 3 and 4. Defendants are warned that failure to comply with an order compelling discovery may result in sanctions which may include dismissal of claims and monetary relief.

IT IS FURTHER ORDERED that on or before August 1, 2007, the movant may submit proof of expenses including attorneys fees incurred in this motion and on or before August 10, 2007 any response may be filed.

DATED this 17th day of July, 2007.

BY THE COURT:



David Nuffer
U.S. Magistrate Judge

¹²“The answers are to be signed by the person making the, and the objections signed by the attorney making them.” Fed. R. Civ. P. 33(b)(2).

¹³Docket nos. 142 and 144.